

4-402. Order of appointment for guardian ad litem.

[For use with District Court Rule 1-053.3]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner

v.

No. _____

_____, Respondent

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER came before the court on _____, 20____. The petitioner was present and was represented by _____. The respondent was present and was represented by _____. The court having reviewed the file and being otherwise advised FINDS:

1. The court has jurisdiction over the parties and subject matter.

2. This action concerns the following minor [child] [children]:

_____, DOB _____, age _____;

_____, DOB _____, age _____;

_____, DOB _____, age _____;

_____, DOB _____, age _____;

3. Good cause exists to appoint a Guardian Ad Litem (hereinafter "GAL") pursuant to Section

40-4-8 NMSA 1978 and Rule 1-053.3 NMRA to represent the [child's] [children's] best interests in this case.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Appointment and duties to the court:** _____ is hereby appointed as

GAL. The GAL shall perform each of the following duties:

(a) interview the [child's] [children's] face-to-face outside the presence of both parents and counsel if the is six (6) years of age or older;

(b) interview all parties and any available parent subject to Rule 16-402 NMRA;

(c) interview each mental health professional treating the [child] [children] after obtaining any necessary authorization;

(d) interview any other [person] [persons] and review any relevant records the GAL deems reasonably necessary after obtaining any necessary authorization;

(e) determine the [child's] [children's] wishes, if appropriate;

(f) submit, but do not file, a written report of investigation and separate written recommendations to all parties and counsel at least ten days before the recommendations are filed with the court, except in the case of emergency;

(g) file the recommendations, but not the report, with the court;

(h) perform the duties to the [child's] [children's] as set forth in Paragraphs H and I of Rule 1-053.3 NMRA; and

(i) in addition to the foregoing, the court directs the GAL to: _____

2. **Adoption of GAL recommendations:**

(a) If the parties are willing to adopt the GAL's recommendations, they shall submit a stipulated order adopting the recommendations within ten (10) days after the recommendations are filed.

(b) If one or both parties are not willing to adopt the recommendations, such party may file objections to the recommendations within ten (10) days after the recommendations are filed and a request and notice for hearing on the objections. The objections shall specifically state what recommendations are objected to and the basis for the objection. The court will set a hearing on the objections.

(c) If no party files timely objections, the court shall enter an appropriate order.

3. **Acceptance of appointment.** If the named GAL is willing to serve, the named GAL shall forthwith file an entry of appearance. If the named GAL is unable or unwilling to serve, the named GAL shall promptly advise the court.

4. **Expiration of appointment.** This appointment shall expire on _____.

5. **Immunity of GAL.** The GAL serves as an arm of the court and assists the court in discharging its duty to adjudicate the [child's] [children's] best interests.

6. **Duties of parties.** The parties shall assist the GAL in carrying out the duties set forth in this order.

7. **GAL fees.**

(a) On or before _____, 20 ____, petitioner shall advance \$_____ and respondent shall advance \$_____ to the GAL as a retainer toward the GAL's fees and expenses. The GAL shall be paid at an hourly rate of _____. When the GAL fees exceed the retainer, petitioner shall pay _____% and respondent shall pay _____% of the additional fees.

(b) The GAL shall submit itemized monthly invoices for professional services to the parties.

(c) The GAL may recommend reallocation of GAL fees and expenses.

(d) Either party or the guardian ad litem may request a hearing on the guardian ad litem fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed _____.

8. **Hearings.** The GAL may request an expedited hearing if there is non-compliance with this order.

District court judge

CERTIFICATE OF MAILING

I, _____, certify that I caused an endorsed copy of this order appointing guardian ad litem to be served on the following persons by (delivery) (mail) on this _____ day of _____, _____:

(Name of petitioner)

(Name of petitioner's attorney)

(Name of respondent)

(Name of respondent's attorney)

(Name of guardian ad litem)

(Name of person signing certificate)

[4A-342 NMRA; provisionally approved by Supreme Court Order No. 06-8300-29, effective January 15, 2007 until January 15, 2008; approved and recompiled by Supreme Court Order 07-8300-21, effective August 21, 2007.]